

Board of Education Agenda Item

Item: _____ M. _____

Date: _____ June 28, 2006 _____

Topic: Report on Status of Proposed Amendments to Virginia's Consolidated State Application Accountability Plan under the *No Child Left Behind Act of 2001*

Presenter: Dr. Linda M. Wallinger, Assistant Superintendent for Instruction
Mrs. Shelley Loving-Ryder, Assistant Superintendent for Assessment and Reporting

Telephone Number: (804) 225-2034 **E-Mail Address:** Linda.Wallinger@doe.virginia.gov
(804) 225-2102 Shelley.Loving-Ryder@doe.virginia.gov

Origin:

☒ Topic presented for information only (no board action required)

☐ Board review required by
☐ State or federal law or regulation
☐ Board of Education regulation
☐ Other: _____

☐ Action requested at this meeting ☐ Action requested at future meeting: _____ (date)

Previous Review/Action:

☐ No previous board review/action

☒ Previous review/action
date March 22, 2006
action Board approved proposed amendments

Background Information:

The *No Child Left Behind Act of 2001* (NCLB), which is a reauthorization of the Elementary and Secondary Education Act (ESEA), requires all state educational agencies (SEA) to submit for approval to the United States Department of Education (USED) individual program applications or a consolidated state application. In May 2002, the Virginia Board of Education submitted and received USED approval for its initial Consolidated State Application under the NCLB law. The NCLB application process involves multiple submissions of information, data, and policies. A major component of the consolidated application is Virginia's Consolidated State Application Accountability Workbook that describes a single statewide accountability system for the commonwealth. The policies and procedures that were used to determine Adequate Yearly Progress (AYP) ratings for the 2005-2006 school year based on 2004-2005 assessment results are described in the amended workbook dated June 22, 2005.

At its March 22, 2006, meeting the Virginia Board of Education adopted proposed amendments to the Consolidated State Application Accountability Plan (amended June 22, 2005) as required in the *No Child Left Behind Act of 2001*.

On March 31, 2006, President of the Board Dr. Mark E. Emblidge communicated the board's action to the United States Department of Education (USED) and asked USED to approve the requests as specific waivers permitted in Section 9401 of the federal law. These amendments are based on four years of implementing NLCB and identification of certain procedures in implementing AYP policies that may result in unintended consequences.

Virginia's proposed amendments fall under 7 major areas: (1) reversing the order of the school choice and supplemental educational services (SES) sanctions; (2) targeting choice and SES only to the subgroup and individual students not making AYP; (3) identifying for improvement only those schools that fail to make AYP for two consecutive years in the same subject and subgroup; (4) including the passing scores of all retests of SOL assessments required for graduation in the calculation of AYP; (5) including test scores from only certain grade levels in the 2006-2007 AYP performance calculation for subgroups; (6) extending flexibility in AYP calculation policies for students with disabilities; and (7) modifying testing and AYP calculation policies for limited English proficient (LEP) students.

On May 24, 2006, the board received a report of the status of the proposed amendments to Virginia's Consolidated State Application Accountability Plan and other compliance requirements associated with NCLB. At that time, USED had not responded to Virginia's request for approved amendments.

On June 2, 2006, the Office of Elementary and Secondary Instruction at the U.S. Department of Education notified the Virginia Department of Education by telephone that a decision had been made on some of Virginia's amendment/waiver requests. Attached is an unofficial summary of that telephone call and subsequent e-mails and telephone calls. According to USED, an official letter of response will follow shortly.

Summary of Major Elements

The unofficial status of the eight proposed amendments is as follows:

- Part of one has been approved;
- One and part of a second are pending;
- Five have not been approved; and
- One has been deferred.

The attachment describes the unofficial status of each of the proposed amendments as well as two options to unapproved amendments that may be exercised without further approval by the U.S. Department of Education (USED).

On June 19, 2006, the Virginia Department of Education filed a request with USED for the first option - participation in the expanded pilot to reverse public school choice and Supplemental Educational Services (SES) for Title I schools in improvement. The second option, exercising additional flexibility related to the grade levels of assessment to be included in the calculation of Adequate Yearly Progress (AYP), does not require permission from USED. However, the Board of Education must approve Virginia's use of this option so it can be included as an amendment to Virginia's Consolidated State Application Accountability Plan under the *No Child Left Behind Act of 2001*. Since significant programming changes for calculating AYP must occur to implement this option, the department requests action on this option at this time. Depending on other responses from USED, additional amendments may be brought to the board at a later meeting.

Superintendent's Recommendation:

The Acting Superintendent of Public Instruction recommends that the Board of Education receive the report and adopt the recommendation to exercise the flexibility provided by the U.S. Department of Education on March 7, 2006, related to the grade levels of assessment to be included in the calculation of Adequate Yearly Progress.

Impact on Resources:

The provisions of the *No Child Left Behind Act of 2001* require the Department of Education to collect, analyze, and report data related to determining Adequate Yearly Progress (AYP) for all schools and school divisions in the state. These responsibilities are currently being absorbed by the Department of Education.

Timetable for Further Review/Action:

On June 19, 2006, the Virginia Department of Education filed a request with USED for the participation of seven school divisions in the expanded pilot to reverse public school choice and Supplemental Educational Services (SES) for Title I schools in improvement. At this time, Virginia continues to wait for an official response from USED related to the other amendments. Once that response is received, a revised Consolidated State Application Accountability Plan that includes all approved amendments will be presented to the board for approval and subsequent submission to USED.

**U.S. Department of Education's Unofficial Response to
Virginia's Amendment/Waiver Requests Based on Telephone Calls and E-Mails
As of June 19, 2006**

1. Reversing Order of School Improvement Sanctions (Critical Elements 1.6 and 4.1)

Request: Virginia will allow schools the flexibility to reverse the order of sanctions in the first two years of school improvement. Supplemental educational services may be offered to eligible students attending Title I schools in improvement in the first year and public school choice in the second year.

USED Unofficial Response:

- Virginia may not exercise this option on a statewide basis. Rather, we should exercise the flexibility option offered in the May 2006 letter from Secretary Spellings that permits a state to apply on behalf of up to seven school divisions in the state to participate in the expanded pilot to reverse the order of School Improvement sanctions.
- The Department of Education informed all school divisions of USED's decision to expand the pilot. Superintendents of school divisions that met the criteria and had the capacity to meet the requirements as outlined by USED were further informed of their eligibility to participate and invited to notify the Department of Education if they were interested. All four of the school divisions that participated in Virginia's pilot for 2005-2006 (Alexandria City, Henry County, Newport News City, and Stafford County) expressed a desire to continue and three additional eligible divisions (Fairfax County, Greene County, and Suffolk City) expressed their interest in time to be included.
- On the submission deadline of June 19, 2006, Virginia filed its request with USED to continue in the expanded pilot with the four original piloting school divisions and the three additional divisions.

Unofficial Status: Not approved - Original request.
Approved Option - Participate in the expanded pilot.

2. AYP: Targeting Choice and Supplemental Services (Critical Elements 1.6 and 4.1)

Request: Virginia will target supplemental educational services (SES) and public school choice for Title I schools in School Improvement only to the subgroup(s) and individual students that are not meeting the Adequate Yearly Progress (AYP) targets in reading/language arts and/or mathematics. Choice and supplemental services will be implemented only for the subgroup(s) and individual students not making AYP.

USED Unofficial Response:

- The statute requires that choice and SES options be offered to all eligible students, not just those in the subgroups that miss AYP. As a result, this amendment is not aligned to NCLB.

Unofficial Status: Not approved.

3. AYP: Consecutive Years Same Subject and Same Subgroup (Critical Element 1.6)

Request: Virginia will identify for improvement only those schools that fail to make AYP for two consecutive years in the same subject and for the same subgroup.

USED Unofficial Response:

- This proposal is inconsistent with the statute's accountability provisions, which require that each subgroup meet the state's annual objectives in each subject each year.
- States currently have the flexibility to determine schools in need of improvement on the basis of not making AYP in the same subject for two consecutive years. This flexibility stems from other provisions in the statute that treat reading and mathematics independently, e.g., separate starting points and annual measurable objectives. These provisions recognize that student achievement in reading and mathematics in a state may be starting at very different points and thus the state would need to establish different trajectories to attain 100 percent proficiency.

Unofficial Status: Not approved.

4. Scores on Retests (Critical Element 3.2)

Request: Virginia will count a student's passing score on a retest of a Standards of Learning test in the calculation of AYP. Retests are provided to students who have previously failed a test they need for graduation.

USED Unofficial Response:

- Virginia's request is under consideration. The Virginia Department of Education has provided additional information to clarify the request.

Unofficial Status: Pending.

5. Grade Levels Included in AYP Calculations (Critical Element 3.2b)

Request: For the 2006-2007 AYP ratings based on tests administered in the 2005-2006 school year, the AYP *participation* rate calculation will be based on reading and mathematics tests administered in grades 3 through 8 and end-of-course. For the *all students* subgroup, AYP *performance* calculations will be based on tests administered in grades 3 through 8 and end-of-course. The *performance* calculations for the other subgroups (e.g., students with disabilities, limited English proficient students, economically disadvantaged students, Black students, White students, and Hispanic students) will be based on tests administered at grades 3, 5, and 8. The newly implemented reading and mathematics tests at grades 4, 6, and 7 will be included in the AYP performance calculation for these subgroups only if their inclusion improves the rating of the school or division.

USED Unofficial Response:

- The U.S. Department of Education expressed concern about the use of scores from one set of tests for the "all students" subgroup and a different set of tests for the individual subgroups.
- A second option is available: Virginia may exercise the flexibility outlined in a March 7, 2006, letter from Assistant Secretary of Education Henry Johnson. The use of the provision below is permissible to all states without further action from the U.S. Department of Education:

Section 1111(b)(2)(J) permits a state to utilize a "uniform averaging procedure" to make AYP determinations, i.e., the state may average assessment data from the current school year with data from one or two school years immediately preceding that school year. Until a state has administered assessments in grades 3-8 for the number of years needed to average data (either two or three years, depending on the state's established practice), the state may make AYP determinations using only the results from the assessments in the grades in which it administered assessments in 2004-2005. For example, if a state administered assessments in grades 4, 8, and 11 to calculate results for AYP, even though the state also administered assessments for the first time in grades 3, 5, and 7 in 2005-2006.

Unofficial Status: Not Approved - Original request.
 Approved Option - Exercise the flexibility outlined in the guidance provided on March 7, 2006. (Decision Point)

6. Assessing Students with Disabilities – Inclusion of SWD Scores for Two Additional Years in AYP (Critical Element 5.3)

Request: Beginning with the 2006-2007 AYP ratings based on tests administered in the 2005-2006 school year, Virginia will include the test scores of students previously identified within the students with disabilities subgroup for up to two years after they no longer receive special education services.

USED Unofficial Response:

- In December 2005, the U.S. Department of Education issued a notice of rulemaking related to providing states with additional flexibility for the achievement of students with disabilities who can make significant progress, but may not reach grade-level achievement standards within the same time frame as other students, even after receiving the best-designed instructional interventions from highly trained teachers.
- Among the provisions of the rulemaking was the option of including in AYP calculations the scores of students with disabilities for two additional years after they no longer receive special education services.
- The U.S. Department of Education indicated that this provision generated considerable public comment, both pro and con.
- As a result, it is uncertain about the provisions that will be included in the final regulations.

Unofficial Status: Deferred until final regulations are released.

7. Assessing Students with Disabilities – Use of Two Percent Proxy and One Percent Exception (Critical Element 5.3)
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Request: Virginia will continue to implement the U.S. Secretary of Education’s Transition Option #1 (2 percent proxy) for the inclusion of students with disabilities in the calculation of Adequate Yearly Progress (AYP) for the 2006-2007 school year, based on assessments administered to those students during the 2005-2006 school year. The proxy will be calculated in accordance with guidance disseminated by USED on May 10, 2005. The proxy percentage applied in Virginia is 14 percent for reading and 17 percent for mathematics. In addition, Virginia requests an exception of 1.1 percent to the 1 percent cap on the number of proficient and advanced scores from alternate assessments based on alternate achievement standards that may be included in AYP.

USED Unofficial Response:

- The U.S. Department of Education indicated approval for the two percent proxy request.
- Virginia has submitted additional data related to the one percent exception as requested by the U.S. Department of Education.

Unofficial Status: Approved - Two percent proxy request.
 Pending - One percent exception request.

8. Inclusion of Limited English Proficient Students in State Assessments (Critical Element 5.4)
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Request: Virginia will allow the reading component of the English language proficiency (ELP) test required under Title I, and the plain language forms of the statewide mathematics assessments to be used as the accountability measure under section 1111(b)(3) for LEP students’ academic achievement during their first 1-3 years of enrollment in the U.S. Students who do not achieve a passing score on the mathematics assessment or the reading component of the ELP test would not be counted in the AYP pass rate calculation, but would be counted toward the 95 percent participation rate calculation. This change will allow Virginia to continue implementing testing policies exempting newly arrived LEP students that are in state regulations and were in effect prior to NCLB.

Consistent with current policy, LEP students in grades 3 through 8 at the lower levels (Level 1 and Level 2) of English language proficiency will take the Standards of Learning assessments for English/reading and mathematics, with or without accommodations, or state-approved assessments linked to the Standards of Learning. LEP students cannot take assessments linked to the Standards of Learning for more than three consecutive years.

USED Unofficial Response:

- The U.S. Department of Education indicated that this flexibility has been requested by and denied to other states.
- Virginia has the option to incorporate flexibility offered for LEP students during their first year of enrollment in the United States, but cannot extend this flexibility beyond one year at this time. Information regarding the current flexibility the Department has offered with regard to LEP students is available at:
<http://www.ed.gov/policy/gen/guid/secletter/040220.html>.
- While this topic was discussed by the LEP Task Force convened by the U.S. Department of Education in June 2005, the results of the task force discussions are pending. The task force report may have some impact on this decision.

Unofficial Status: Not approved.

Additional Proposed Amendment to Virginia's Consolidated State Application Accountability Plan Required in NCLB

June 28, 2006

On March 31, 2006, President of the Board Dr. Mark E. Emblidge communicated eight proposed amendments to the United States Department of Education (USED) and asked that USED approve them as part of Virginia's Consolidated State Application Accountability Plan. On June 14, 2006, the Virginia Department of Education received unofficial confirmation that the following request would not be approved:

5. Grade Levels Included in AYP Calculations (Critical Element 3.2b)

Request: For the 2006-2007 AYP ratings based on tests administered in the 2005-2006 school year, the AYP *participation* rate calculation will be based on reading and mathematics tests administered in grades 3 through 8 and end-of-course. For the *all students* subgroup, AYP *performance* calculations will be based on tests administered in grades 3 through 8 and end-of-course. The *performance* calculations for the other subgroups (e.g., students with disabilities, limited English proficient students, economically disadvantaged students, Black students, White students, and Hispanic students) will be based on tests administered at grades 3, 5, and 8. The newly implemented reading and mathematics tests at grades 4, 6, and 7 will be included in the AYP performance calculation for these subgroups only if their inclusion improves the rating of the school or division.

However, USED noted that Virginia could exercise the flexibility outlined in a March 7, 2006, letter from Assistant Secretary of Education Henry Johnson. The use of the provision below is permissible to all states without further action from the U.S. Department of Education:

Section 1111(b)(2)(J) permits a state to utilize a "uniform averaging procedure" to make AYP determinations, i.e., the state may average assessment data from the current school year with data from one or two school years immediately preceding that school year. Until a state has administered assessments in grades 3-8 for the number of years needed to average data (either two or three years, depending on the state's established practice), the state may make AYP determinations using only the results from the assessments in the grades in which it administered assessments in 2004-2005. For example, if a state administered assessments in grades 4, 8, and 11 to calculate results for AYP, even though the state also administered assessments for the first time in grades 3, 5, and 7 in 2005-2006.

Recommendation: The Acting Superintendent of Public Instruction recommends that the board exercise the flexibility provided by the U.S. Department of Education on March 7, 2006, related to the grade levels of assessment to be included in the calculation of Adequate Yearly Progress.